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|---|-------------------|-----------------|---------------|
| WaiversFirst Name | Last Name | Claim Number | |
| | | W-16-0001 | |
| Amount | OGC Received Date | Assigned To | Assigned Date |
| \$624.52 | 01/20/2016 | John Rowland | 01/20/2016 |
| EPA Decision | EPA Decision Date | Amount Approved | Status |
| APPROVED | 03/10/2016 | \$624.52 | CLOSED |
| Appeal | Comments | | |
| No | | | |
| Type | | | |
| Improper Appointment to Federal Service | | | |

Attachments

From: Redden, Kenneth
Sent: Thursday, March 10, 2016 11:15 AM
To: Young, Debbie <young.debbie@epa.gov>
Subject: FW: Waiver Decision for [REDACTED]

Hi again Debbie,

One more thing. Could you please coordinate with the Interior Business Center? The email I used below for Duke Dupre just got sent back as undeliverable. Thanks.

From: Redden, Kenneth
Sent: Thursday, March 10, 2016 11:12 AM
To: Young, Debbie <young.debbie@epa.gov>
Cc: 'Duke_Dupre@ibc.gov' <Duke_Dupre@ibc.gov>
Subject: Waiver Decision for [REDACTED]

Debbie,

This email is in response to the debt waiver request submitted by EPA's Human Resources Shared Service Center (HRSSC) in Cincinnati on behalf [REDACTED]
[REDACTED] he Office of the Chief Financial Officer (OCFO) clarified that [REDACTED] did not personally submit a waiver request; but because the HRSSC attributed the erroneous payments to him solely to their administrative oversight, HRSSC submitted this request for him with his consent. Specifically, HRSSC requests a waiver of a debt in the gross amount of \$624.52 that [REDACTED] incurred after HRSSC processed a personnel action in February 2015 for OECA without legal authority that detailed him to a position in the competitive service

at the grade of GS-15, Step 3. [REDACTED] was selected to this detail from a PAVE announcement. HRSSC canceled the personnel action in April 2015 after discovering this error. For the reasons set forth herein, the waiver request for [REDACTED] is approved.

Background

In a letter dated October 19, 2015, from Ollie B. Thomas, Lead Human Resources Specialist, HRSSC, to the Department of Interior, Interior Business Center (IBC),[[1] In 2014 EPA migrated its human resources and payroll system from the Defense Finance and Accounting System (DFAS) to the Department of Interior's, Interior Business Center (IBC).

1] Mr. Thomas explained that the underlying debt arose after HRSSC processed a personnel action for [REDACTED]

[REDACTED] [[2] OECA advertised this detail in a PAVE announcement and this position was located in [REDACTED]

2] Mr. Thomas also stated that during an audit of the completed personnel action on April 3, 2015, HRSSC discovered that it lacked authority to process this personnel action and cancelled it on April 3, 2015.

An employee in the excepted service (i.e., Schedule C employees such as attorneys)[[3] Schedule C employees are those who hold "positions of a confidential or policy-determining nature" pursuant to 5 C.F.R. § 213.3301. The Honorable William D. Ford, 1987 U.S. Comp. Gen. LEXIS 1695 (Comp. Gen. Jan. 30, 1987).3] cannot be assigned to work in a position in the competitive service without prior approval of the Office of Personnel Management (OPM) pursuant to 5 C.F.R. § 6.5. The Honorable William D. Ford, 1987 U.S. Comp. Gen. LEXIS 1695 (Comp. Gen. Jan. 30, 1987). HRSSC did not obtain such OPM approval before it processed this personnel action. Therefore, the detail and the temporary promotion were improper. In re Morrow, 58 Comp. Gen. 88 (Comp. Gen. 1978). As such, the temporary promotion of [REDACTED] during his detail between February 22, 2015 and April 3, 2015 resulted in erroneous payments in the gross amount of \$624.52.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Matter of Robert L. Rancourt, 1990 U.S. Comp. Gen. LEXIS 1053 (Comp. Gen. Oct. 9, 1990). An employee is deemed to be at fault and waiver is

precluded if an employee is aware or should have been aware that he/she was being overpaid. Matter of Ragsdale, 1996 U.S. Comp. Gen. LEXIS 218 (Comp. Gen. Apr. 18, 1996). In the present case, I find that the erroneous payments were caused by the mistaken belief on the part of staff in HRSSC that attorneys (Schedule C employees) could be assigned to work in a position in the competitive service without prior OPM approval. HRSSC has assumed responsibility for these erroneous payments and believes that [REDACTED] is without fault. Therefore, the only issue before me is whether there is a sufficient basis for me to conclude that [REDACTED] knew or should have known that he was not entitled to be detailed to this competitive service position which included a temporary promotion.

Analysis

Although [REDACTED] there is no evidence that he knew or should have known of the prohibition under 5 C.F.R. § 6.5 when he accepted the detail to the position in the competitive service as a [REDACTED]

In an email dated October 14, 2015, [REDACTED] informed Ollie Thomas, HRSSC, that he had no prior knowledge that his selection for this detail would be a problem. Although in an email dated March 23, 2015, [REDACTED] stated to then Acting Director of HRSSC that he was “familiar with the OPM and hiring authority rules,” his February 24, 2016 email to my office clarified that this statement had nothing to do with his eligibility for the detail. Rather, he explained that it related to his eligibility to apply to job vacancy announcements [REDACTED] [REDACTED] that said “open to employees with competitive status.”

According to [REDACTED], his statement attempted to characterize his growing understanding of OPM rules relative to an employee’s eligibility to reinstatement to the competitive service based on previously occupying competitive service jobs.[[4] Under 5 CFR 315.401, subject to certain limitations, an agency may appoint by reinstatement to a competitive service position a person who previously was employed under career or career-conditional appointment (or equivalent). 4] Prior to becoming an [REDACTED], he held several OECA jobs which he believed were in the competitive service. He stated that in 2014 he began to apply to branch chief positions in the competitive service, but he began to receive inconsistent eligibility determinations on his applications. In that regard, he stated that EPA personnel staff gave him conflicting advice. The purpose of his March 23, 2015 email was to resolve this issue. The subject of his email was

“Requesting your help with inconsistent HR practices at EPA.” It appears that this email focused on the narrow issue of whether he had reinstatement rights to the competitive service to make him eligible for “full time” branch chief positions.

There is no basis for concluding that he knew or should have known about the prohibition under 5 C.F.R. § 6.5, much less its relationship to “details.” The erroneous payments related to his temporary promotion occurred because HRSSC and OECA management were not aware that 5 C.F.R. § 6.5 also applied to details. There is no indication that [REDACTED] growing understanding of OPM rules constituted any special knowledge of personnel laws or payroll processes or that he worked in any OECA positions in which such knowledge was required. Under these circumstances, I think that it was reasonable for him to rely on the implicit assurances of HRSSC and OECA that his detail and temporary promotion were proper. Without such special knowledge, there was no basis for him to question the agency’s assurances that the detail and temporary promotion were correct. In re Fuesel, 1988 U.S. Comp. Gen. LEXIS 152 (Comp. Gen. Feb. 2, 1988). Since he received the payments during his temporary promotion in good faith and without knowledge that it was erroneous, collection of the erroneous payments would be against equity and not in the best interest of the United States.

Accordingly, the overpayment in the gross amount of \$624.52 made to [REDACTED] is hereby waived under the authority of 5 U.S.C. § 5584.

[1] In 2014 EPA migrated its human resources and payroll system from the Defense Finance and Accounting System (DFAS) to the Department of Interior’s, Interior Business Center (IBC).

2 [REDACTED]

3 Schedule C employees are those who hold “positions of a confidential or policy-determining nature” pursuant to 5 C.F.R. § 213.3301. The Honorable William D. Ford, 1987 U.S. Comp. Gen. LEXIS 1695 (Comp. Gen. Jan. 30, 1987).

4 Under 5 CFR 315.401, subject to certain limitations, an agency may appoint by reinstatement to a competitive service position a person who previously was employed under career or career-conditional appointment (or equivalent).

Kenneth A. Redden
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Civil Rights & Finance Law Office
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U.S. EPA
202-564-4707 (phone), 202-564-5416